

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 395 of 1994

in

SPECIAL CIVIL APPLICATION No 11648 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRIKABEN NAYALCHAND GARDI

Versus

JAMNAGAR MUNICIPAL CORPORATION

Appearance:

MR BP TANNA for Petitioner

MR DN PATEL, ADDL GOVERNMENT PLEADER for

Respondent No. 2 AND 3

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/03/98

ORAL JUDGEMENT (Per Patel, J.)

Petitioner, a public spirited citizen has approached this Court by challenging action of the respondent No.2 in appointing a person as an Administrative Officer of the Municipal School Board, not only in contravention of the provisions of law but in breach of the order passed by this Court. This Court, after hearing the parties, by interim direction, ordered that the respondents shall make no appointment on the post of Administrative Officer without following the provisions of Section 22 of the Bombay Primary Education Act.

2. Under section 21 of the Bombay Primary Education Act, Administrative Officer can be appointed by the State Government. Under section 22 of the Act, certain Municipalities are authorised to appoint Administrative Officer, after following the procedure laid down in section 22. The Court was of the view that the Administrative Officer should be appointed in the manner laid down in section 22 of the Act, as a Teacher was sought to be appointed as an Administrative Officer in contravention of the provisions contained in section 22 of the Act, and, therefore, the order came to be passed. If the State, by exercising powers under section 21 of the Act was to appoint an Administrator, situation would have been different.

3. Despite the order, one B.T. Purohit, who was at the relevant time working as District Education Officer, Jamnagar passed an order on 18.1.1994, appointing one A.D. Khumbharana as Administrative Officer. In response to the notice issued by the Court, an affidavit has been filed by one M.G. Sharma, D.E.O., Jamnagar, justifying the action. When the matter was being heard, attention of the learned Additional Government Pleader was drawn to the order passed by the Court and the provisions contained in the Act. Ultimately, today, B.T. Purohit, who passed the order in breach of the orders passed by this Court, has tendered an unconditional apology and has further stated that a bonafide mistake has been committed by him by mis-reading and mis-interpreting sections 21 and 22 of the Bombay Primary Education Act. He has also given assurance that in future, no such mistake will be repeated. It is also stated that one D.M. Purohit working in place of A.B. Khumbharana has been transferred as an Assistant Teacher where he was working, and today, there is none on the post of Administrative Officer of the Municipal School Board. Thus, the contemnor has purged, though belatedly.

4. Looking to the explanation tendered by the concerned officer, we accept the unconditional apology.

It is hoped that the Respondents will not commit any breach in future.

Rule is discharged.
csm./ -----